Appendix "A"

FULL TEXT OF DISTRICT COURT'S OPINION.

IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF ALASKA
DIVISION NUMBER ONE, AT JUNEAU

FIDALGO ISLAND PACKING COMPANY, a corporation, *Plaintiff,* vs. A. B. PHILLIPS, Executive Director, Employment Security Commission of Alaska, *Defendant,* CLARA WILSON, *Intervenor.*	May 7, 1954 No. 6865-A

OPINION

H. L. FAULKNER, of FAULKNER, BANFIELD & BOOCHEVER, Juneau, Alaska, for plaintiff.

EDWARD A. MERDES, Assistant Attorney General of Alaska, Juneau, Alaska, for defendant.

Plaintiff, a salmon packer, and intervenor, a cannery employee, seek to enjoin the enforcement of Regulation 10, promulgated June 29, 1953, by the then Acting Director of the Employment Security Commission, establishing seasonal periods for employers in the canned salmon industry, on the ground that it is invalid and that its enforcement will injuriously affect them, and in support thereof contend:

(1) That the defendant had no authority to make Regulation 10 because (a) the authority previously delegated to him expired with the abolition of the Unemployment Security Commission on June 26, 1953, by Chapter 82, S.L.A. 1953; (b) the regulation does not conform to the formula prescribed by Section 7 of Chapter 99, S.L.A. 1949, for the determination of seasonal and nonseasonal employment; and (c) that prior to its issuance no notice was given to, nor any opportunity to be heard afforded, those affected by the regulation;

(2) That it selects salmon packers only and excludes others engaged in seasonal activities, particularly those engaged in construction, and, hence, is discriminatory in its operation as between such employers and as between their nonresident and resident workers.

The defendant contends:

(1) That neither the plaintiff nor the intervenor may challenge the validity of the regulation because (a) they failed to exhaust the administrative remedy of appeal provided by Chapter 99, S.L.A. 1953; and (b) that the plaintiff and intervenor have failed to show any irreparable injury.

In opposition to the plaintiff's first contention the defendant argues that the authority of the defendant to promulgate the regulation was not affected by the repeal of the prior law creating the Commission because (a) the new Commission was in existence; and (b) the statute repealed was simultaneously re-enacted.

The canned salmon and the construction industries are fairly comparable. Both depend to a great extent on nonresident workers who come into the Territory in the spring and leave in the late summer or early fall. In both employment is at its peak in July and at its lowest in January and February. To illustrate, in 1953, which is typical of recent years, as against 13,680 employed in the canned salmon industry in July and 624 in midwinter the construction industry employed 15,709 and 3,818. The Commission has declared only the salmon industry to be seasonal. Although proportionate contributions are made by both industries to the unemployment fund, the employees of the canned salmon industry are paid benefits only if they are unemployed during the seasonal periods fixed by the Commission, whereas the employees of the construction industry receive benefits over the entire year, which in many, if not most cases, amount to far more than their contributions. In 1953 these amounted to $1,828,017.00 for nonresident workers. It is not surprising, therefore, to learn that despite the fact that employment has been at an all-time high in recent years, due to defense construction, the fund has nevertheless dwindled steadily. In 1953 contributions and benefit payments totaled $4,101,000.00 and $5,640,-783.00 respectively. At the same time the ratio of reserves to taxable pay rolls, which must be maintained at a certain level before experience rating credits may be allowed employers, had decreased from 21.82% in 1946 to 5.62% in 1953. On March 31, 1954, and April 24, 1954, the fund amounted to $5,327,213.57 and $4,380,-

000.00 respectively, and in 1953 the Commission paid out in benefits approximately 40% more than it received in contributions.

An employee who earns at least 80% of his wages during the year in seasonal employment is classified as a seasonal worker and is eligible to receive unemployment benefits only if unemployed during the seasonal period fixed for his employer by the Commission, whereas, if he is classed as a nonseasonal worker, he may receive benefits for 26 weeks.

Upon the final hearing the Court declared that it would take judicial notice of the fact that outside construction work in the Territory, except in Ketchikan and vicinity, is limited by weather to the period from May to October, and is therefore, seasonal in fact.

The present Director of the Employment Security Commission has been substituted for his predecessor as defendant.

Section 51-5-1 (f), A.C.L.A. 1949, defines the Commission as including any person to whom the Commission delegates its power and duties. Section 51-5-11 (d) provides that the Commission may "appoint and prescribe the duties of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties," and "may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this act * * ". Pursuant thereto the Commission in 1938 delegated authority to the Director to "make rules and regulations when the Commission is not in session."

Section 51-5-10, A.C.L.A. 1949, was repealed by Chapter 82, S.L.A. 1953, effective June 26, 1953. The effect of this was the abolition of the Commission. Chapter 83, S.L.A. 1953, effective June 26, however, substantially re-enacted the provisions repealed. Since the terms of the several members of the Commission were originally fixed by statute to expire at different times, implying an intention to give it continuity, it is clear that in enacting Chapter 83 it was the intention of the Legislature to start anew with a new Commission. Under the new law the members were appointed on June 24, 1953, but it does not appear when they were confirmed or when they qualified.

Chapter 99, S.L.A. 1953, made extensive changes in the law by the way of repeal and amendment. Section 7 thereof, prescribing a new formula for determining seasonality of employment and requiring the Commission to make such determination before June 30, became effective April 1, 1953, but the remainder of the Act did not become effective until July 5, 1953. It was under Section 7 of this Act that the defendant on June 29 promulgated Regulation 10.

This suit was commenced July 29, 1953.

Obviously, the Commission could not function until the new members qualified, met and organized. The first meeting of the Commission was on August 6, 1953, but it appears that it adjourned without taking any action with respect to the attack on Regulation 10. Indeed, it appears that there was a disposition on the part of the Commission to shirk its responsibility in the face of group pressure. On one side were arrayed

those engaged in construction activities, the unions and their members, who find it to their advantage to resist classification as seasonal notwithstanding that the character of the industry is clearly seasonal; and on the other those engaged in salmon packing, their unions and members, as well as others engaged in non-seasonal activities, who assert that the failure to classify the construction industry as seasonal results in discrimination against them, deprives them of equal benefits under the law, and imposes greater burdens on them.

On behalf of the plaintiff and intervenor it is argued that, unless Regulation 10 is declared invalid and industries are classified according to their character instead of according to group pressure, the unemployment compensation fund will soon be depleted to the point where under the mandatory provisions of Section 51-5-2 (b) (1), A.C.L.A. 1949, contributions will have to be increased and benefits drastically decreased.

The questions presented are:

(1) Should the rule of the exhaustion of administrative remedies be applied to this case?

(2) Is Regulation 10 valid?

(3) Is the injury threatened irreparable?

The general rule of course is that one must exhaust his administrative remedies before he may resort to the Courts. I am convinced that, if this rule is applicable to the facts of this case, the plaintiff cannot prevail.

Chapter 99, S. L. A. 1953, requires a redetermination by the Commission of seasonal periods of employ-

ment according to the formula prescribed by Section 7 thereof, the issuance of a regulation specifying such seasonal periods, the giving of notice thereof to the employer affected, and allows anyone aggrieved to take an appeal to the Commission within 15 days. Neither the plaintiff nor intervenor appealed from Regulation 10. The defendant contends that their failure to exhaust this remedy bars their resort to this Court. On the other hand, the plaintiff and intervenor contend that the authority delegated to the defendant expired with the abolition of the Commission by Chapter 82, that there was no Commission to appeal to until August 6th, when it met for the first time, and that in any event an appeal would have been futile because, when the new Commission finally met in October, it became deadlocked by reason of a tie vote on every major issue and, hence, was unable to function.

The last contention may be disposed of by the observation that the application of the doctrine does not depend on what may be said in retrospect. Here, as in analogous situations, diligence is the criterion. The remaining contentions are in my opinion untenable for, apparently, the new members of the Commission had qualified, and in any event an appeal may be prosecuted although the appellate tribunal is not in session.

But although these contentions would ordinarily be without merit, they may yet be considered in determining whether the circumstances of this case are such as to warrant the conclusion that the doctrine should not be applied.

I turn now to a consideration of this question.

The authority delegated to the Director of the Commission was to "make rules and regulations when the Commission is not in session." This clearly contemplates matters arising between sessions of the Commission such as has not arisen by, or were not foreseen at, the time of adjournment. Obviously, it cannot be said that the determination of seasonal periods, to say nothing of the redetermination thereof, by the new Commission according to the formula prescribed by Section 7 of Chapter 99, after the intentional abolition of the old Commission, was a matter arising between sessions. On the contrary, it was the first task of the new commission.

The law expressly requires the Commission to determine seasonality and provides, Section 7 (c) (1), that "no such employer or operating unit shall be deemed to be seasonal unless and until so determined by the Commission," and, further, that "when the Commission has finally determined seasonal periods, it shall issue a regulation specifying the seasonal periods during which benefits shall be payable to eligible beneficiaries for unemployment occurring in the benefit year affected by such regulation."

Generally speaking, the limit of the authority of and administrative officer is the carrying out of a law according to its terms. Here, under the authority delegated, the defendant assumed the exercise of what appears to be a discretionary power. The defendant makes the point that the regulation does not determine the seasonal periods but merely specifies them. Not only is this distinction immaterial, but the argument

overlooks the fact that it is the regulation which gives effect to the determination of seasonal periods and is the means by which such determination is enforced. I am of the opinion, therefore, that the determination of seasonality was neither delegated nor intended to be delegated. An examination of the law discloses that the determination of seasonality is not only one of the most important functions of the Commission but also one that must be performed before the law can become fully operative. It is inconceivable that the exercise of this function would be delegated.

Another factor to be taken into consideration, in determining whether the doctrine of the exhaustion of administrative remedies should be applied to this case, is the validity of the regulation. It not only appears that the regulation ignores the mandate of the law that all employers and employing units be classified as seasonal and nonseasonal and the seasonal periods for each established, but also that the regulation classifies the canned salmon industry not by employers or units thereof, but by areas and open seasons as established by the Fish & Wildlife Service, regardless of the disparities between such seasons and the periods of actual operations. The effect of this is to require greater contributions by the employer from which neither the employer nor employee derives any benefit. It also appears that the regulation was adopted without notice and without affording those concerned an opportunity to be heard, as prescribed by Section 51-1-11(b).

From what has already been said it is clear that the regulation is not within the authority delegated,

that it was not promulgated in compliance with statutory provisions, and that it is inconsistent with the law under which it was purportedly made because it selects one seasonal industry and fixes the seasonal periods therefor, whereas the law requires the determination of seasonal periods for all employers, and, hence, is discriminatory in its application and operation.

While the fact that the Commission has been unable to function since its organization, because of the deadlock referred to, would ordinarily be irrelevant on the question of whether administrative remedies have been exhausted, it is nevertheless a circumstance that may be taken into consideration in determining whether the rule ought to be applied. The plaintiff was more likely mistaken than remiss in not availing itself of an appeal, but there is no question of its good faith. Moreover, even had the time not expired, it would seem wrong to require the plaintiff to exhaust his remedy by way of an appeal in a case in which it would appear that under no circumstances could the regulation ultimately be upheld. Indeed, the very nature of the problems presented poses the question whether the remedy is not judicial, rather than administrative, to which the doctrine of the exhaustion of remedies would not apply. In view of the circumstances of this case, I am of the opinion that the doctrine should not be applied. 39 *Cornell Law* Quarterly 285; *Gonzales vs. Williams,* 192 U. S. 1; U. S. *ex rel. DeLucia vs. O'Donovan,* 178 F. 2d 876; *Public Utilities Commission vs. Gas Company,* 317 U. S. 456; *Breiner vs. Vallin,* 79 F. Supp. 506, 507-8.

The final question is whether the plaintiff or intervenor has shown threatened injury of an irreparable character.

Although it can hardly be said that Regulation 10 is discriminatory on its face, it is clear that, being limited to only one of the many seasonal industries, its operation and enforcement result in discrimination against all employers in the canned salmon industry and their employees. The law clearly requires the classification of employers as seasonal or nonseasonal, and it is not perceived how the law could operate fairly or uniformly until this is done.

The claim of irreparable injury is based, in the main, on the progressive diminution of the fund, which in turn will require greater contributions by, and the loss of credit ratings to, the employer, and decreased benefits to the employee.

The failure to classify the construction industry as seasonal is undoubtedly the largest contributing factor in the process of depletion. In the case of year-round employment, although the employers contribute for the entire year, their employees receive no benefits. The construction industry contributes only for six months of the year or so but its employees may draw the maximum compensation. For example, the maximum contribution, on the first $3000.00 of the wages of an employee of the former who receives no benefits, is $81.00, but an employee of the latter, contributing about half as much, may receive up to $910.00 in benefits.

A worker in the canned salmon industry is eligible for unemployment relief only if he is not employed during the seasonal period fixed by the Commission, whereas employees in other industries which are in fact seasonal but have not been so classified may receive benefits over the entire year if unemployed. As between resident and nonresident workers in the canned salmon industry, the resident may receive benefits only if unemployed during the period referred to, whereas the nonresident is not so limited. Since all this results in the payment of increased benefits to the favored classes, it accelerates the depletion of the fund, which in turn will require a drastic increase in the rate of employer contributions and a corresponding decrease in benefits to employees. It appears, therefore, that although the plaintiff is required to contribute proportionately to the unemployment compensation fund, the fund is disbursed largely for the benefit of those who become entitled to disproportionate benefits solely by reason of being treated as nonseasonal when in fact their employment is seasonal, and that the payment of such benefits is causing the depletion of the funds, to the prejudice of the plaintiff and intervenor.

The defendant argues that, if the regulation is invalidated, the unemployment compensation fund will be more quickly exhausted because of the necessity of paying benefits to cannery workers on a par with nonseasonal workers. It requires no perspicacity to see that if one entitled to a share of a common fund foregoes his right thereto the process of depletion will be retarded. Aside from the fact that such an argument

can have no appeal to a court of equity, it is wholly irrelevant. The paramount objective of the court is justice. The depletion of the fund is of no concern to the court except as it may shed light upon the contentions of the parties. It may not be amiss, however, to point out that, apparently, the defendant is concerned with depletion only if the process is accelerated by according the same rights to the plaintiff and the intervenor as all others engaged in seasonal activities receive.

This suffices to show that the threatened injury is irreparable in character. I conclude, therefore, that the plaintiff and intervenor are entitled to have the enforcement of Regulation 10 enjoined.

/s/ George W. Folta
District Judge

Appendix "B"

FULL TEXT OF COURT OF APPEALS' ORIGINAL OPINION.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

A. B. PHILLIPS, Executive Director Employment Security Commission of Alaska,

Appellant,

vs.

FIDALGO ISLAND PACKING CO.,

Appellee.

CLARA WILSON,

Intervenor.

No. 14,505
Sep. 13, 1955

Appeal from the District Court for District of Alaska, Division Number One.

Before: HEALY, FEE and CHAMBERS, Circuit Judges. PER CURIAM

This is an extremely confusing case in which appeal is taken from the judgment of the District Court of the District of Alaska, holding an administrative order null and void for lack of jurisdiction on the part of the Territorial employee who purported to promulgate it. The court issued an injunction against enforcement.

Fidalgo Island Packing Co., an employer of labor in the fishing industry of Alaska, and the Intervenor, one

Clara Wilson, who claimed to be an employee in that industry, obtained a permanent injunction against the enforcement of the purported Amended Regulation No. 10. This regulation attempted to specify seasonable periods during which benefits would be payable to eligible beneficiaries for unemployment occurring within the benefit year, out of the Employment Security Fund established by the Territorial Legislature. This Amended Regulation was supposedly issued by and under the authority of the Employers Security Commission which was no longer in existence at the date of the issuance thereof.

The trial court found that the Packing Company and the Intervenor were entitled to represent the employers and employees in the industry and that the Packing Company and all others on whose behalf the action was brought had been injured and would be further irreparably injured if the purported regulation were enforced.

The trial court made, among others, the following findings of fact:

> "1. That the Employment Security Commission of Alaska, formerly known as the Unemployment Compensation Commission, was created by Act of the Legislature of Alaska at the extraordinary session in 1937 and under the provisions of Section 51-5-10 of what is now the Alaska Compiled Laws Annotated, 1949, and that on March 26, 1953, at its session of that year, the Alaska Legislature passed Chapter 82, Session Laws of Alaska, 1953, abolishing the Employment Security Commission, and this Act became effective on June 25, 1953. On the same day the Legislature enacted Chapter 83, Ses-

sion Laws of Alaska, 1953, creating a new and different Commission, which Act became effective on June 25, 1953.

"2. That no meetings of either the old or the new Commission were held under any statute of the Territory after March, 1953, and until August 6, 1953, and, the old Commission having ceased to function and having only one member from March 26, 1953, until and including June 25, 1953, John T. McLaughlin during that period and until sometime after August 6, 1953, assumed to act as Acting Director of the Employment Security Commission of Alaska, and he was succeeded by A. B. Phillips, the present Director of Employment Security Commission of Alaska, on August 24, 1953. The former defendant in this case, John T. McLaughlin, on June 29, 1953, assumed to promulgate and to distribute to all persons and corporations engaged in packing salmon in Alaska, purported amended Regulation No. 10, which is set up in Paragraph 6 of plaintiff's complaint.

"3. That this purported amended Regulation set certain seasons of seasonal employment for all persons and corporations engaged in packing of salmon in the Territory of Alaska, and notices were sent to plaintiff and to all others similarly situated and to all those engaged in packing salmon in Alaska that this purported and attempted Regulation was in effect from and after July 5, 1953, superseding all former regulations on the subject.

"4. That on March 23, 1953, the Legislature of the Territory passed an act known as Chapter 99, Session Laws of Alaska 1953, amending the Unemployment Compensation Act of Alaska, which, with exception of Section 7 thereof, became effective on

July 5, 1953, and Section 7 thereof became effective on April 1, 1953.

"5. That the provisions of Chapter 99, Session Laws of Alaska 1953, provide that the Employment Security Commission is charged with the duty of classifying all employers in Alaska as seasonal or nonseasonal in accordance with their employment records for the previous two consecutive calendar years or operating years. This duty is enjoined upon the Commission and under the provisions of Chapter 99, Session Laws of Alaska 1953, employment for the purpose of determining seasonality is placed upon an employer or unit basis rather than on an industry basis, as under the old law which was repealed by Chapter 99.

"6. That neither the former Acting Director McLaughlin nor the Employment Security Commission of Alaska had, prior to June 29, 1953, or at any other time, made any classifications of seasonality in employment in the Territory, except those attempted to be made by purported amended Regulation No. 10, which attempted to apply seasonality to the salmon canning industry as an industry. No other industries or employers have been classified as seasonal.

* * * * * * * *

"9. That the former defendant, John T. McLaughlin, and the present defendant, A. B. Phillips, are threatening to enforce purported amended Regulation No. 10 unless enjoined by the court.

"10. That at the time purported amended Regulation No. 10 was attempted to be promulgated and declared to be in force, the former Employment Security Commission had been abolished and the new Commission had not yet come into existence and

had not met at the time this action was instituted, and they did not meet until August 6, 1953, and there was no Commission in existence to which an appeal could have been taken from purported amended Regulation No. 10.

"11. That former Acting Director McLaughlin had no power or authority on June 29, 1953, to promulgate any regulation affecting seasonal employment in the Territory, or any other regulation of the Commission, and such authority as might have been delegated to him at one time under the old Commission did not exist on June 29, 1953, and could not be exercised on or after that date. The purported amended Regulation No. 10 is, therefore, void and no appeal to the Commission is necessary and no pursuit of any administrative remedies was necessary to attack the validity of pretended amended Regulation No. 10 and no appeal to any administrative body is required from an invalid order made by one without authority."

Upon these findings the court concluded that the purported amended Regulation was void and of no effect.

There is a presumption of lawful exercise of authority surrounding the acts of courts of general jurisdiction which is not enjoyed by administrative bodies. Jurisdiction of the subject matter and the persons must be pleaded and proved. No such showing was made here. The facts found by the trial court establish the position that no such showing was possible. Since the order was then void there was no necessity for exhaustion of supposed administrative remedies. All persons could with impunity disregard the order. Any person having a legal interest and suffered injury by threatened en-

forcement would be entitled to have judicial restraint placed upon those presuming to act upon it.

A regulation cannot be issued by a Commission which is no longer in existence. Any delegation of authority by the old Commission became null and void when the body itself was abolished.

We indicate no doubt of the validity of the result by recognizing that there are other legislative developments in this field since the cause was tried.

Affirmed.

(Endorsed:) Per Curiam Opinion. Filed Sep. 13, 1955.

1955. Paul P. O'Brien, Clerk.

Appendix "C"

FULL TEXT OF COURT OF APPEALS' OPINION DISPOSING OF PETITION FOR REHEARING.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

A. B. PHILLIPS, Executive Director, Employment Security Commission of Alaska, *Appellant,* vs. FIDALGO ISLAND PACKING CO., *Appellee,* CLARA WILSON, *Intervenor.*	No. 14,505 June 21, 1956

Upon Petition for Rehearing

Before: HEALY, FEE and CHAMBERS, Circuit Judges

PER CURIAM:

In the petition for rehearing, appellant misreads the per curiam opinion of this Court. There was no intention in that opinion to controvert well established principles. Where an administrative agency or officer has been given jurisdiction over the subject matter of a field, the presumption of validity of the regulations and acts of such agency or officer applies. Here the jurisdiction of the old commission over the subject matter had expired by abolition of the agency. The delegated power

to the Executive Director of the old commission expired when it went out of existence. The rulings may be explained upon principles of agency as well as upon grounds of lack of jurisdiction. If the new commission desired to delegate power to the Executive Director, it could not act before its creation and assumption of authority. His purported action in the interim between the expiration of his delegation of power by the old commission and the organization of the new commission was void, not voidable, because no body had jurisdiction of the subject matter at the time and he had no delegated authority to act in the premises. The fact that the acts abolishing one body and creating another were passed simultaneously is without significance. The only confusion apparent in this case is that of legislative policy and the application thereof by the administrative agencies which have been created. On the other hand, an emergency has obviously been prevented by federal legislation.

The petition for rehearing is denied.

(Endorsed:) Per Curiam Opinion on Petition for Rehearing. Filed June 21, 1956. Paul P. O'Brien, Clerk.

Appendix "D"

SECTION 51-5-1 (f), ALASKA COMPILED LAWS ANNOTATED, 1949.

"(f) 'Commission' means the Unemployment Compensation Commission established by this Act or any person to whom this Commission may delegate its powers and duties."

Appendix "E"

SECTION 51-5-7 (h), ALASKA COMPILED LAWS ANNOTATED, 1949.

"(h) *Appeal to Courts.* Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose, or at the Commission's request by the Attorney General."

Appendix "F"

SECTION 51-5-11 (b), ALASKA COMPILED LAWS ANNOTATED, 1949.

"* * * Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission."

Appendix "G"

CHAPTER 82, SESSION LAWS OF ALASKA, 1953.

TERRITORY OF ALASKA
OFFICE OF THE AUDITOR
JUNEAU, ALASKA

CHAPTER 82
AN ACT

[H. B. 128]

To repeal Subsection (a), paragraphs (1), (2) and (3), and Subsections (b) and (c) of Section 51-5-10, Alaska Compiled Laws Annotated 1949, as amended by Chapter 53, Session Laws of Alaska, 1949.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That Subsection (a), paragraphs (1), (2) and (3), and Subsections (b) and (c) of Section 51-5-10, Alaska Compiled Laws Annotated 1949, as amended by Chapter 53, Session Laws of Alaska, 1949, be and it is hereby repealed.

Appendix "H"

CHAPTER 83, SESSION LAWS OF ALASKA, 1953.

TERRITORY OF ALASKA
OFFICE OF THE AUDITOR
JUNEAU, ALASKA

CHAPTER 83
AN ACT

[H. B. 129]

To create an Employment Security Commission of Alaska.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. There is hereby created a commission to be known as the Employment Security Commission of Alaska. The Commission shall consist of four members, who shall be appointed by the Governor, by and with the consent of the legislature, in joint session of both houses, as soon as possible after passage and approval of this Act. Members of the Commission shall be residents of the Territory of Alaska and citizens of the United States, over the age of twenty-one years. Not more than two members of the Commission shall be of the same Political Party. Two members shall be representative of industry or management and two shall be representative of labor. Each member shall hold office for a term of six years, except that:

(1) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of that term; and if a vacancy occurs at a time when the legislature is not in session, through death, resignation, removal or disqualification, under this Act, a new member shall be appointed by the Governor to fill the vacancy who shall have the qualifications herein prescribed and who shall hold office for the remainder of the term for which his predecessor was appointed; and

(2) The terms of office of the members first taking office after the date of the enactment of this Act shall begin on the date of their appointment and shall expire, one on February 1, 1955, one on February 1, 1957, one on February 1, 1959 and one on February 1, 1961. The members of the Commission shall be Territorial officers, and before entering upon the discharge of their duties, shall take such oaths of office as are prescribed for Territorial officers. The Governor may, at any time, after notice and hearing, remove any Commissioner for gross inefficiency, neglect of duty, malfeasance in office, or commission of a crime.

Upon the expiration of the term of a member, the Governor shall submit the name of a successor for confirmation by the legislature then in session; if the Governor does not submit such name, the incumbent shall continue to hold office and to perform the duties thereof until his successor shall be appointed and confirmed by the legislature, as in this section provided, and no re-

cess or interim appointments shall be made in such cases.

(3) The Commission shall appoint a director who shall be the chief executive of the Commission, whose compensation shall be Eight Thousand Five Hundred Dollars ($8,500.00 per annum, payable in equal monthly installments; he shall be appointed for a term of four years and may be removed at the pleasure of the Commission. No person shall be appointed Director unless he is a citizen of the United States, a resident of this Territory and has been such resident at least five years immediately preceding his appointment. The Director shall be subject to the supervision and direction of the Commission and shall perform such duties as the Commission may assign him.

(b) One of the members of the Commission so appointed shall be chosen by all members as Chairman of the Commission. Members of the Commission shall be reimbursed for actual travel expenses and shall receive a per diem allowance for each day that they are away from home in connection with their official duties in carrying out the purpose of this Act. The reimbursement of all Commissioners shall be from the Employment Security Commission administration fund.

(c) Any three Commissioners shall constitute a quorum, and no vacancy shall impair the rights of the remaining Commissioners to exercise all the powers of the Commission.

Appendix "I"

SECTION 7 OF CHAPTER 99, SESSION LAWS OF ALASKA, 1953.

"Section 7. That Sec. 51-5-2(c) ACLA 1949 is hereby repealed and a new section in lieu thereof is hereby enacted to read as follows:

(c) (1) Seasonal Employer. As used in this section the term 'seasonal employer' means an employer or operating unit of an employer which because of the seasonal nature of its operations, reduces its employment to such an extent that its monthly payroll for each of three consecutive months in each of two consecutive calendar or operating years immediately preceding the year for which the determination is made, is less than one-half the average monthly payroll for the three consecutive months of highest payroll in the same calendar or operating years. No such employer or operating unit shall be deemed to be seasonal unless and until so determined by the Commission. A successor in interest of a seasonal employer or operating unit shall be deemed seasonal upon the same basis as the predecessor unless determined otherwise by the Commission.

(2) Seasonal Period and Duration of Determination. In establishing a seasonal period as contemplated herein, the Commission shall make such investigations and conduct such hearings as may be required, and shall use as a guide data relating to the best practices of the industry in which the employer is engaged.

When the Commission has finally determined seasonal periods, it shall issue a regulation specifying the seasonal periods during which benefits shall be payable to eligible beneficiaries for unemployment occurring within the benefit year affected by such regulation.

Employers affected by such regulation shall report on forms provided by the Commission the wages payable to individuals in their employ during the inclusive dates of the seasonal period set by the Commission, as distinguished from wages payable for employment before or after such seasonal period.

Prior to June thirtieth each year, a written determination declaring the employer to be seasonal and specifying the period of seasonal operation shall be forwarded to the employer involved. Notice of the determined season shall be forwarded to any representative of individuals in the employment of such employer and of whom the Commission has knowledge. Within fifteen days after the date of mailing or handing such written declaration, the employer or other interested party may appeal from such determination. An appeal shall be made to the Commission stating therein why the determination is appealed. After affording the parties a reasonable opportunity to submit briefs with respect to the determination appealed from, the Commission may affirm, modify, or set aside such determination, and such action of the Commission shall be deemed conclusive unless further appeal is initiated as provided in Section 51-5-7 (h) herein.

(3) Seasonal Employment Defined. 'Seasonal employment' means all employment for a seasonal

employer or operating unit within the season determined by the Commission as its operating season. All wages payable by a seasonal employer within such operating season shall be deemed seasonal wages.

(4) Operating Unit. For the purposes of this Act relating to seasonal employment, an 'operating unit' is any unit of an employer's business which frequently is conducted as a separate and independent operation.

(5) Seasonal Worker. 'Seasonal worker' means an individual who has base period wage credits of which at least eighty percentum have been earned in seasonal employment.

(6) Benefit Payments to Seasonal Workers. When the Commission has designated the operations of an employer or an operating unit as seasonal, then benefits shall be payable to seasonal workers employed thereby only on account of unemployment occurring during the regular period of such seasonal employment as designated in Section 51-5-2 (c) (2)."

Appendix "J"

AMENDED BENEFIT REGULATION NO. 10
EFFECTIVE JUNE 29, 1953.

EMPLOYMENT SECURITY COMMISSION OF ALASKA

REGULATION 10. ESTABLISHING SEASONAL PERIODS AND PROVIDING FOR PAYMENT OF BENEFITS TO SEASONAL WORKERS.

Section 51-5-2 (c) Alaska Compiled Laws Annotated 1949 as amended by Section 7, Chapter 99, Laws of 1953, provides:

> "(2) * * * When the Commission has finally determined seasonal periods, it shall issue a regulation specifying the seasonal periods during which benefits shall be payable to eligible beneficiaries for unemployment occurring within the benefit year affected by such regulation. * * *"

The Commission accordingly prescribes:

I. SEASONAL PERIODS FOR THE CALENDAR YEAR 1953 FOR CERTAIN EMPLOYERS ENGAGED IN THE CANNING OF SALMON TAKEN IN THE OPERATING AREA DESIGNATED.

OPERATING AREA[1]	SEASONAL INCLUSIVE DATES	SEASONAL CODE
Yukon	May 30 to September 5	19
Bristol Bay	June 20 to August 1	20
Alaska Peninsula and Cook Inlet	May 23 to August 8	21
Chignik and Kodiak	June 13 to August 15	22
Resurrection Bay	June 27 to October 3	23
Prince William Sound	July 12 to August 29	29
Copper River and Bering River	April 25 to September 26	24
Yakutat	May 30 to October 3	25
Southeastern:		
Icy Straight, Eastern (except Taku River & Port Snettisham) & Western Districts	June 13 to August 29	27
Stikine District, and Taku River and Port Snettisham in Eastern District	(May 2 to June 12	26
	(June 13 to August 29	27
Sumner Strait, Clarence Straight South Prince of Wales Island and Southern districts	(August 30 to October 3	28
	July 12 to August 29	29

[1]Operating Areas herein are as more particularly described in regulatory announcements of the U. S. Fish & Wildlife Service.

II. REPORTING BY SEASONAL EMPLOYERS:

Employers having been determined by the Commission to be seasonal employers and so notified shall report the amount of wages payable to individuals in their employ within the inclusive dates of the seasonal period established by the Commission as distinguished from wages payable for employment before or after such established season.

III. BENEFIT PAYMENTS TO SEASONAL WORKERS.

A seasonal worker is one who has base period wage credits of which at least eighty percentum have been earned in seasonal employment. Benefits shall be payable to seasonal workers only on account of unemployment occurring during the seasonal period applicable to such unemployment as designated in paragraph I herein.

Pursuant to the appropriate provisions of the Alaska Employment Security Law (Sections 51-5-1 to 20 ACLA 1949, as amended) and in accordance with the authority vested in me, I, John T. McLaughlin, the duly qualified and acting executive director of the Employment Security Commission of Alaska, do hereby adopt the foregoing regulation, designated as Regulation 10, and prescribe that the same shall take effect July 5, 1953, superseding former Regulation 10 dated October 16, 1952.

Dated at Juneau, Alaska, this twenty-ninth day of June, 1953.

JOHN T. McLAUGHLIN,
Executive Director, Employment
Security Commission of Alaska.

Appendix "K"

PERTINENT EXCERPTS FROM 1953 ALASKA SENATE JOURNAL, PAGES 923, 924, 60TH DAY.

"Thereupon Senator Engstrom asked unanimous consent that the Senate again pass HOUSE BILL NO. 128, notwithstanding the Governor's veto. Without objection it was so ordered.

The question being, 'Shall HOUSE BILL NO. 128, notwithstanding the Governor's veto, pass the Senate?', the roll was called with the following result:

Yeas, 13—***

Nays, 3—***

And so the Bill passed, notwithstanding the Governor's veto, and the House was so notified.

Senator Engstrom asked unanimous consent that the senate again pass HOUSE BILL NO. 129, notwithstanding the Governor's veto. Without objection, it was so ordered.

The question being, 'Shall HOUSE BILL NO. 129, notwithstanding the Governor's veto, pass the Senate?', the roll was called with the following result:

Yeas, 14—***

Nays, 2—***

And so the Bill passed, nothwithstanding the Governor's veto, and the House was so notified."

Appendix "L"

CERTIFICATION OF APPOINTMENTS TO EMPLOYMENT SECURITY COMMISSION OF ALASKA.

I, Waino E. Hendrickson, Secretary of Alaska, hereby certify that Governor B. Frank Heintzleman has appointed the below named members of the Employment Security Commission of Alaska in compliances with the provisions of Chapter 83, Session Laws of Alaska, 1953.

R. L. Jernberg, Box 893, Ketchikan, Alaska, Democrat, representing Management, appointed June 24, 1953, for term ending February 1, 1961.
Lyle E. Anderson, 1010 S Street, Anchorage, Alaska, Republican, representing management, appointed June 24, 1953, for term ending February 1, 1959.
Robert Dixon, Box 609, Fairbanks, Alaska, Democrat, representing Labor, appointed June 24, 1953, for term ending February 1, 1955.
Fred Williamson, Box 1963, Anchorage, Alaska, Republican representing Labor, appointed June 24, 1953, for term ending February 1, 1957.

s/WAINO E. HENDRICKSON
Secretary of Alaska.

THE SEAL OF THE TERRITORY OF ALASKA.